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### **REMARKS**

Please amend claim 1 as indicated to comply with 35 U.S.C. 112, 2<sup>nd</sup> Paragraph. Please cancel claims 9-12, which claims have been restricted out and withdrawn from the prosecution of the present application by the Examiner. Applicants expressly retain all rights in the cancelled claims for further consideration, as they deem appropriate. The cancellation of these claims should in no manner whatsoever be construed as a dedication of the subject matter of these claims to the public.

In view of the following remarks in response to the Official Action, favorable reconsideration is respectfully requested. It is submitted that the Response places the Application in condition for allowance. Alternatively, the Examiner is kindly requested to enter the Response, which narrows the issues for disposition on Appeal. Entry of the Response is therefore kindly solicited.

Page and paragraph references herein to the present application will be from US 2002/0106466, the corresponding published application of the present invention.

#### **Rejection Under 35 USC 112, 2<sup>nd</sup> Paragraph**

Claim 1 remains rejected under the above section of the statute.

Claim 1, at line 2, has been amended to recite, " a multilayer polymer film comprising". This amendment provides antecedent basis for the later-recited "the multilayer polymer film." The amendment is made to correct an informality under 35 USC 112, 2<sup>nd</sup> Paragraph, and does not affect the scope

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of the subject matter of claim 1. The Examiner is kindly requested to reconsider and withdraw the rejection in light of the amendment.

#### Prior Art Rejections

Claims 1 and 4 remain rejected and claim 13 has been rejected under 35 USC 102(b) as being anticipated by WO99/39675 ("Hekel") for the reasons stated in the present Official Action and the Official Action dated April 9, 2004.

The rejection of claims 1, 4, and 13 under Hekel is respectfully traversed. For the reasons discussed hereinafter, it is respectfully submitted that the rejection is in error and that these claims, as well as all of the claims, are patentable over Hekel.

According to the Examiner, "[A]pplicant does not mention that Hekel teaches that the odor absorber of Hekel 'can be applied conveniently in fish wrapping or in a covering for animal waste' as previous Office Actions have pointed out...Applicant has not addressed this teaching in Applicant's arguments."

Even assuming *arguendo*, that the odor absorber of Hekel can be applied in wrapping fresh fish, as stated by the Examiner, the claims of the present application are patentable over Hekel for the following reasons.

Hekel's disclosure and objective is clearly stated. The disclosure of Hekel is replete with references to effectively removing all malodorous compounds, such as amines. For instance, at page 7, lls 21-28, Hekel teaches that the "multilayer structure is then formed into a tampon. During use, the absorbent layers would adsorb the menstrual fluid, while the matrix film layer in between the adsorbent layers would adsorb the odor causing

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amine compounds, generally trimethylamine, and hence remove the odor (emphasis supplied)."

At Example 1 of Hekel, the odor-adsorber, zeolite, is mixed with polyethylene acrylic acid and extruded to form a film. The film was tested for its capacity to absorb trimethylamine. According to the Example, "[t]he results demonstrated that the material was effective in absorbing all of the amine in solution (emphasis added)."

Hence, the objective of Hekel is to remove ALL of the offensive amine odors. The Examiner at page 6 of the present Official Action recognizes and admits this by stating "[t]he goal of Hekel is....to avoid exposure to 'odor-causing compounds such as amines (emphasis added)."

By way of comparison, claim 1 calls for a package comprising, inter alia, a multilayer polymer film comprising an adsorbent layer of the specified copolymer of ethylene and an amine adsorbent material....wherein the adsorbent film layer adsorbs amines in an amount sufficient to eliminate levels that are noisome but not eliminate levels that are indicative of dangerous deterioration of the fresh fish or other perishable food items (emphasis added).

By way of the present invention, the adsorbent film advantageously adsorbs amines, but does not adsorb all of the amines that would be formed due to dangerous deterioration of food beyond which the food would not be suitable or safe for consumption by the public, as called for by claim 1.

Hence, the objective of the claimed invention is clearly and distinctly different from the teachings of Hekel, who teaches the removal of ALL malodorous amines from various sources. As called for by claim 1, the

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objective is to remove levels of amine up to an amount of amine, beyond which amount of amine would indicate dangerous deterioration of the food product. Hence, the goal of the present invention, if you will, is not to avoid exposure to amines, as in Hekel, but rather to alert consumers to the presence of amines in foods unfit and unsafe for consumption.

Claim 4 additionally calls for clear and distinct differences over Hekel. Claim 4 calls for the active amine-adsorbing ingredient to hinder adsorption of amine by the adsorbent film layer over a 72-hour period to a level below the level of amine adsorption that would occur over that same time without the amine-adsorbing ingredient added to the adsorbent film layer.

According to the Examiner at page 5 of the present Official Action, "Hekel teaches the structure and composition claimed by Applicant in claim 1; therefore, the package of Hekel necessarily performs the function that is claimed in claim 1." And in Paper 12 (Official Action dated August 5, 2003), the Examiner stated that "the amine adsorption amount 'over a 72-hr period' (as claimed) for the film having the active ingredient [amine adsorbing ingredient] necessarily is the same as the amine adsorption amount 'over a 72-hour period' for the film that does not have the active ingredient (emphasis added)."

But clearly, as described hereinafter, the data from both Applicants' specification and Hekel do not support the Examiner's above stated bases for rejecting the claims.

The Examiner's attention is directed to Paragraphs 0032, 0033, 0038 and Table 5 at 0039 of the published application; and specifically to Examples

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1 and 1 A. Example 1 is the ethylene copolymer alone and Example 1A is the same copolymer with an active amine adsorbent ingredient (Abscents® 3000).

As can be seen at 72 hours, Example 1A has adsorbed only one-half (60ug of TMA adsorbed) of the amount of TMA as that adsorbed by Example 1 (120ug of TMA). At Paragraph 0041, it describes that "[A]t 72 hours, however, it can be seen that the adsorption of amines is hindered when the active amine adsorber is added (emphasis added)."

This test data directly refutes the Examiner's statements cited above that the "amine adsorption amount" would "necessarily" be the "same" over a 72-hour period for both the film alone and film with active amine adsorber.

If this test data represented a packaged fish or other food product, as called for by claim 4, then the presence of an active amine adsorber would hinder the adsorption of amine by the adsorbent film layer, advantageously leaving behind levels of amine for detection by a consumer, which amine levels may well indicate that the fish or other food item is not suitable for safe consumption.

By way of comparison, in the Example of Hekel, the adsorbent film layer containing active amine adsorber after only 4 hours adsorbed ALL of the amine, which is the exact result desired and taught by Hekel with regard to providing an adsorbent film layer that removes ALL or effectively removes all of the malodorous amines.

The data in the specification and in Hekel therefore cannot be fairly argued to factually support the Examiner's position that the package of Hekel "necessarily performs the function that is claimed in claim 1[or claim 4]."

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Clearly, Applicants' invention is patentably distinguishable over Hekel. As was stated in the previous Amendment at page 9, as cited by the Examiner yet apparently not fully appreciated, "[A]pplicants have made use of this new discovery to tailor the amine adsorption of the claimed packaging material as described above."

Nowhere in Hekel is there any disclosure or teaching of the subject matter of claim 4. As discussed above, Hekel is clearly directed to the adsorption of ALL malodorous amines by an adsorbent material containing an active amine adsorber.

It is therefore respectfully submitted that claims 1, 4, and 13(which depends from claims 1 or 2) are patentably distinguishable over the disclosure and teachings of Hekel. The Examiner is kindly requested to reconsider and withdraw the rejection of these claims under 35 USC 102(b).

#### 35 USC 103(a) Rejections

The rejection of claims 2, 4, and 6 over Hekel in view of US Pat. No. 4,161,562 ("Yoshikawa"); the rejection of claims 3 and 5 over Hekel in view of EP 0686497 ("Kennedy"); the rejection of claims 3, 5, and 7 over Hekel in view of Yoshikawa and further in view of Kennedy; and the rejection of claim 8 over Hekel in view of US Pat. No. 5,744,182 ("Andersson") have been maintained for the reasons of record.

Applicants have previously addressed the secondary references (Yoshikawa *et al.*) and why the combination of Hekel with any of Yoshikawa *et al.* does not render the subject matter of the rejected claims obvious over the prior art.

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At Paragraphs 17 and 18 of the present Official Action, the Examiner provides his basis for rejecting Applicants' previous arguments over these rejections. According to the Examiner, Applicants' arguments with respect to Yoshikawa *et al.* are "irrelevant" because "Hekel teaches the structure and composition claimed by Applicant in claim 1[independent claim]; therefore, the package of Hekel necessarily performs the function that is claimed in claim 1, and the package taught by the combination of Hekel and Yoshikawa and/or Kennedy and...the combination of Hekel and Andersson consequently necessarily performs the function that is claimed in claim 1 (emphasis added)."

Hence, all of the prior art rejections under Section 103 necessarily stand or fall together on the Examiner's position that "the package of Hekel [primary reference] necessarily performs the function [with respect to amine adsorption] that is claimed in claim1."

It is respectfully submitted that this basis for the rejection of the claims has been clearly refuted and disproved factually by test data and discussion above with respect to the rejection of the claims over Hekel under 35 U.S.C 102(b). It has been clearly demonstrated that the package of Hekel does not function as the claimed package of the present invention.

Therefore, there is no legal basis for any of the rejections under 35 U.S.C. 103(a). The Examiner is kindly requested to reconsider and withdraw the rejections.

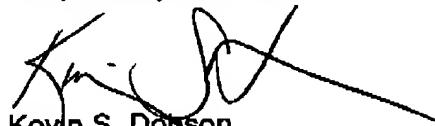
It is therefore respectfully submitted that claims 1-8 and 13 are patentable and in condition for allowance.

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Favorable reconsideration is respectfully solicited. Entry of the Response into the record is also respectfully requested. The Response is submitted to place the application in condition for allowance. Alternatively, the Response narrows the issues for disposition on Appeal. Should the Examiner believe that an interview or other action in Applicants' behalf would expedite prosecution of the application, the Examiner is urged to contact Applicants' attorney by telephone at (302) 992-3219.

Respectfully submitted,



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Dated: 2/16/05